

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

CALIFORNIA STEAMIN' and;
DAVID A. DEAN,

Case No.: 3:01-cv-00440-WQH-MSB

Plaintiffs. | **ORDER**

V.

CITY OF TEMECULA; et al.,

Defendants.

HAYES, Judge:

The matters before the Court are the Motion to Re-Open and Reconsider filed by Plaintiff David A. Dean (ECF No. 59), the Motion to Consolidate Cases filed by Plaintiff David A. Dean (ECF No. 77), and the Motion to Consolidate and Stay filed by Plaintiff David A. Dean (ECF No. 81).

BACKGROUND

On March 13, 2001, Plaintiffs California Steamin' and David A. Dean, proceeding pro se, initiated this action by filing a Complaint pursuant to 42 U.S.C. § 1983 against Defendants City of Temecula, Riverside County Sheriff's Department, Richard Riles, Jon Cook, Deputy Rico, Buie Communities, Charley Wickfield, Mike Ash, Woodside Homes, Bryan Stancil, Troy Woods, Corky McMillin, Lance Doe, Eddie Andrade, Continental

1 Homes, Karen Ness, Mike Parks, and Ted Sawyer. (ECF No. 1). Plaintiff David A. Dean
2 alleges that Defendants violated his First, Fourth, Fifth, and Fourteenth Amendment rights.
3 *Id.* at 5. Plaintiff David A. Dean alleges that Defendants' actions led to his unlawful arrest
4 and "led to the closure of Plaintiff's company California Steamin'". *Id.*

5 On September 24, 2001, the Court dismissed the case without prejudice for failure
6 to serve as to Defendants City of Temecula, Riverside County Sheriff's Department,
7 Richard Riles, Jon Cook, Deputy Rico, Buie Communities, Charley Wickfield, Mike Ash,
8 Woodside Homes, Bryan Stancil, Troy Woods, Corky McMillin, Lance Doe, and Eddie
9 Andrade. (ECF No. 11).

10 On May 17, 2002, Defendants Continental Homes, Karen Ness, Mike Parks, and
11 Ted Sawyer filed a Motion to Dismiss, or alternatively, for Summary Judgment. (ECF No.
12 15). The record reflects that Plaintiffs did not file a Response in Opposition and Defendants
13 did not file a Reply. On July 1, 2002, the Court granted Defendants Continental Homes,
14 Karen Ness, Mike Parks, and Ted Sawyer's Motion for Summary Judgment. (ECF No.
15 24). The Court concluded that the Defendants were private parties and did not "conspire[]
16 with government agents to deprive Plaintiff Dean of his constitutional rights." *Id.* at 3. On
17 July 2, 2002, the Clerk of the Court entered judgment. (ECF No. 25).

18 On June 21, 2019, this case was reassigned to this Court. (ECF No. 33).

19 On July 3, 2019, Plaintiff David A. Dean filed a declaration. (ECF No. 35). On July
20 8, 2019 Plaintiff David A. Dean filed a declaration. (ECF No. 37). On August 2, 2019,
21 Plaintiff David A. Dean filed five letters (ECF Nos. 41, 43, 45, 47, 49); a Motion to Reopen
22 (ECF No. 51); and a Motion to Withdraw Motion to Re-Open (ECF No. 53).

23 On August 13, 2019, this Court issued a minute entry granting Plaintiff David A.
24 Dean's Motion to Withdraw Motion to Reopen (ECF No. 53) and denying as moot Plaintiff
25 David A. Dean's Motion to Reopen (ECF No. 51). (ECF No. 54).

26 On August 26, 2019, Plaintiff David A. Dean filed a declaration. (ECF No. 57). On
27 November 7, 2019, Plaintiff David A. Dean filed a notice of lodgment (ECF No. 59), which
28 includes a Motion to Re-Open and a Motion to Reconsider. On the same day, Plaintiff

1 David A. Dean filed a letter (ECF No. 61). On November 21, 2019, Plaintiff David A.
2 Dean filed a letter. (ECF No. 63). On December 13, 2019, Plaintiff David A. Dean filed
3 an amendment. (ECF No. 65). On December 23, 2019, Plaintiff David A. Dean filed a
4 notice of lodgment (ECF No. 67) and a declaration (ECF No. 69). On December 30, 2019,
5 Plaintiff David A. Dean filed a notice of lodgment (ECF No. 71); a Motion to Consolidate
6 Cases (ECF No. 77); two letters (ECF No. 78, 79); a declaration (ECF No. 80); and a
7 Motion to Consolidate and Stay (ECF No. 81). On January 2, 2020, Plaintiff David A.
8 Dean filed a notice of lodgment (ECF No. 83). On January 6, 2020, Plaintiff David A.
9 Dean filed four declarations (ECF No. 85, 91, 93, 95); a series of documents (ECF No. 87);
10 and notice (ECF No. 89). Plaintiff David A. Dean has failed to file proof of service.

11 **RULING OF THE COURT**

12 Federal Rule of Civil Procedure 60(b) provides that,

13 On motion and just terms, the court may relieve a party or its legal
14 representative from a final judgment, order, or proceeding for the following
15 reasons: (1) mistake, inadvertence, surprise, or excusable neglect; (2) newly
16 discovered evidence that, with reasonable diligence, could not have been
17 discovered in time to move for a new trial under Rule 59(b); (3) fraud (whether
18 previously called intrinsic or extrinsic), misrepresentation, or misconduct by
19 an opposing party; (4) the judgment is void; (5) the judgment has been
satisfied, released or discharged; it is based on an earlier judgment that has
been reversed or vacated; or applying it prospectively is no longer equitable;
or (6) any other reason that justifies relief.

20 Fed. R. Civ. P. 60(b)(1-6). “A motion under Rule 60(b) must be made within a reasonable
21 time—and for reasons (1), (2), and (3) no more than a year after the entry of the judgment
22 or order or the date of the proceeding.” Fed. R. Civ. P. 60(c)(1). Plaintiff David A. Dean
23 has not set forth sufficient evidence to support relief from judgment. Plaintiff’s Rule 60(b)
24 motion is not timely as to reasons (1), (2), and (3) because judgment was entered on July
25 2, 2002. Plaintiff further has not set forth sufficient any evidence in support of reasons (4),
26 (5), or (6). The Court has reviewed the Motions to Consolidate Cases (ECF Nos. 77, 81)
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1 and finds no cause to consolidate this action with Plaintiff David A. Dean's state court
2 cases.

3 IT IS HEREBY ORDERED that the Motion to Re-Open and Reconsider filed by
4 Plaintiff David A. Dean (ECF No. 59) is DENIED.

5 IT IS FURTHER ORDERED that the Motion to Consolidate Cases filed by Plaintiff
6 David A. Dean (ECF No. 77) is DENIED.

7 IT IS FURTHER ORDERED that the Motion to Consolidate and Stay filed by
8 Plaintiff David A. Dean (ECF No. 81) is DENIED.

9 Dated: January 9, 2020



10 Hon. William Q. Hayes
11 United States District Court

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